

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

STEVEN GERGELY,	:	
	:	NO. 1:09-CV-00924
Plaintiff,	:	
	:	
	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
	:	
WARREN CORRECTIONAL	:	
INSTITUTION, et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation, (doc. 25), to which no objections were filed. The Magistrate Judge recommends that Defendants' motion for summary judgment be granted (doc. 18) and that Plaintiff's counter-motion for summary judgment be denied (doc. 22).

Plaintiff brought this action pursuant to 42 U.S.C. § 1983, alleging that Defendants violated the Eighth Amendment to the United States Constitution when they failed to provide Plaintiff, an inmate at Warren Correctional Institution, with a functioning toilet for five days (doc. 1). The Magistrate Judge determined that the record does not support a finding of a constitutional violation because Plaintiff's situation was temporary and did not constitute a serious deprivation of a basic human need (doc. 25, citing, inter alia, Knop v. Johnson, 977 F.2d 966, 1013 (6<sup>th</sup> Cir. 1992)). Consequently, the Magistrate Judge concluded that

Defendants are entitled to judgment as a matter of law (Id.).

Having reviewed this matter pursuant to 28 U.S.C. §636(b), the Court finds no clear error on the face of the record and, indeed, finds the Report and Recommendation to be thorough, well-reasoned and correct. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150(1985)("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety (doc. 25). Therefore, the Court GRANTS Defendants' motion for summary judgment (doc. 18), DENIES Plaintiff's motion for summary judgment (doc. 22), and DISMISSES this case WITH PREJUDICE from the Court's docket.

SO ORDERED.

Dated: May 4, 2011

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge